

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

GOLDEN TOUCH TRANSPORTATION OF
NY, INC.

Employer

and

Case No. 29-RC-10205

INTERNATIONAL ASSOCIATION OF MACHINISTS
& AEROSPACE WORKERS, AFL-CIO,
DISTRICT LODGE 15, LOCAL LODGE 447

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Marcia Adams, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The parties stipulated that Golden Touch Transportation of New York, Inc., herein called the Employer, a domestic corporation with its principal office and place of bus located at 109-15 14th Ave, College Point, NY and an office located at Bus Lot Hangar 3, La Guardia Airport, Queens, New York, is in the business of providing ground transportation services in New York, Connecticut and New Jersey, including LaGuardia Airport. During the past year, which period is representative of its annual

operations generally, the Employer, in the course and conduct of its business operations, purchased and received at its New York facilities supplies and materials valued in excess of \$50,000 directly from points outside the State of New York.

Based on the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. International Association of Machinists, AFL-CIO, District Lodge 15, Local Lodge 447, herein called the Petitioner, seeks to represent a unit of all full-time and regular part-time airport bus drivers employed by the Employer at its Hangar 3 Bus Lot facility located at LaGuardia Airport, Queens, New York, but excluding all other employees, office clerical employees, professional employees, managers, guards, and supervisors as defined in the Act.¹

The Employer raised issues regarding the alleged statutory supervisory status of certain individuals, and regarding the appropriateness of the petitioned-for bargaining unit.

Supervisory Issue

The parties stipulated that Khemraj Singh is a supervisor as defined in Section 2(11) of the Act. In addition, the Employer took the position that Mike Huntley,

¹ The unit description appears as amended at the hearing.

Richard Torres, and Harrison Habart are statutory supervisors. At the outset of the hearing, the Union conceded that it had received some information tending to support the Employer's contentions with regard to Torres and Huntley, but asserted that it had no information regarding Habart's alleged supervisory status.

After hearing testimony by Spiro Neokleous, the Employer's Director of LaGuardia Operations, and reviewing documents offered into evidence by the Employer, the Union agreed to stipulate that Huntley, Torres, and Habart are supervisors as defined by Section 2(11) of the Act. However, despite having taken the position that these three individuals are supervisors, and despite having presented evidence in support of its position, the Employer refused to stipulate that they are statutory supervisors.²

Based on the record evidence, which establishes that Huntley, Torres, and Habart possess statutory supervisory authority, and given that by virtue of the positions of the parties, as described above, there is no dispute over whether these individuals are supervisors as defined in Section 2(11) of the Act, I find that they are supervisors within the meaning of the Act.

Unit Issue

The Employer asserts that the unit should only encompass bus drivers who operate the ramp service for Delta Airlines and United Airlines, and those who operate the airport employee shuttle service for LaGuardia Airport Airlines Managers' Council Organization ("LAAMCO"). In fact, the Petitioner seeks to represent a unit consisting only of these same employees. While conceding that it does not provide ground transportation services for any other clients at the LaGuardia Airport location other than

² The refusal to so stipulate, under these circumstances, would appear to constitute an abuse of the Board's processes.

those noted above, and that it does not anticipate doing so in the immediate future for any other customer, the Employer took the position that the petitioned-for bargaining unit is “overbroad” because the unit description does not refer specifically to its customers, Delta Airlines, United Airlines and LAAMCO.

It appears that the parties are in agreement as to the scope and composition of the bargaining unit of the unit sought by the Petitioner. The only dispute involves the inclusion of the Employer’s customers in the unit description. It is my conclusion that the absence of the Employer’s customers’ names does not render the unit sought inappropriate. Accordingly, based on the record evidence, I find that the petitioned-for unit is appropriate. Accordingly, I will direct an election in the following unit, which I find to be appropriate for the purposes of collective bargaining:

All full-time and regular part-time airport bus drivers employed by the Employer at its Hangar 3 Bus Lot facility located at LaGuardia Airport, Queens, New York, but excluding all other employees, office clerical employees, professional employees, managers, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by International Association of Machinists, AFL-CIO, District Lodge 15, Local Lodge 447. The date, time, and place of the election will be specified in the notice of election that the Board’s Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees

who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be

clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One MetroTech Center North, 10th Floor, Brooklyn, New York 11201, on or before **May 27, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579 or by electronic transmission at Region29@NLRB.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or E-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **June 3, 2004**. The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: May 13, 2004, Brooklyn, New York.

/S/ ALVIN BLYER

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201